

JONATHAN MARKS (JM-3240)  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-4454

MICHAEL A. CHAGARES (MC 5483)  
Assistant United States Attorney  
Chief, Civil Division  
District of New Jersey  
970 Broad Street  
Newark, New Jersey 07102  
(973) 645-2700

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

AFG INDUSTRIES, INC.; ATLANTIC METALS,  
INC.; BOC GASES; DEL VAL INK &  
COLOR, INC.; DE SOTO, INC./SHERMAN WIRE  
CORPORATION; FORD MOTOR COMPANY;  
HOEGANAES CORPORATION; HONEYWELL,  
INC.; L&L REDI MIX, INC.; EPEC  
POLYMERS, INC.; 20<sup>TH</sup> CENTURY REFUSE  
REMOVAL CO.; SC HOLDINGS, INC.;  
WASTE MANAGEMENT OF NEW JERSEY,  
INC.; WASTE MANAGEMENT OF  
PENNSYLVANIA, INC.; and WASTE  
MANAGEMENT DISPOSAL SERVICES OF  
PENNSYLVANIA, INC.

Defendants.

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Civil Action No.

**COMPLAINT**

## **COMPLAINT**

1. The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

### **STATEMENT OF THE CASE**

2. This is a civil action for recovery of response costs pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a). The United States seeks recovery from the above-named defendants ("Defendants") of costs incurred and to be incurred by the United States in response to releases or threatened releases of hazardous substances at or from the Cinnaminson Groundwater Contamination Superfund Site, located in the Townships of Delran and Cinnaminson, Burlington County, New Jersey ("the Site").

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

4. Venue is proper in this judicial district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose, and the releases or threatened releases of hazardous substances occurred, in this district.

### **DEFENDANTS**

5. Defendant AFG Industries, Inc. ("AFG") is a corporation organized and existing

under the laws of the State of Delaware, with its principal place of business at 1400 Lincoln Street, Kingsport, TN 37660. At times material hereto, AFG has done business in this judicial district and has owned or operated a facility that is a part of the Site.

6. Defendant Atlantic Metals, Inc. ("Atlantic Metals") is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business at Orthodox Street, at Delaware River, Philadelphia, PA 19137. At times material hereto, Atlantic Metals, Inc. has done business in this judicial district. Upon information and belief, Atlantic Metals arranged for the disposal or treatment at the Site, or arranged with a transporter for the disposal or treatment at the Site, of wastes that included hazardous substances.

7. Defendant BOC Gases, formerly Airco, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 575 Mountain Avenue, Murry Hill, NJ 07974 . At times material hereto, BOC Gases and/or its predecessor Airco Industrial Gases, Inc. ("Airco") has done business in this judicial district and has owned or operated a facility at the Site. Upon information and belief, BOC Gases and/or Airco arranged for the disposal or treatment at the Site, or arranged with a transporter for the disposal or treatment at the Site, of wastes that included hazardous substances.

8. Defendant Del Val Ink & Color, Inc. ("Del Val") is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business at 1301 Taylors Lane, Riverton, NJ 08077. At times material hereto, Del Val has done business in this judicial district and has owned or operated a facility at the Site. Upon information and belief, Del Val arranged for the disposal or treatment at the Site, or arranged with a transporter for the disposal or treatment at the Site, of wastes that included hazardous substances.

9. Defendant Sherman Wire Corporation ("Sherman Wire"), formerly De Soto, Inc. ("DeSoto"), is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 5430 Lyndon B. Johnson Freeway, Suite 1740, Dallas, TX 75201. At times material hereto, Sherman Wire Corporation and/or its predecessor DeSoto has done business in this judicial district. Upon information and belief, Sherman Wire and/or DeSoto, arranged for the disposal or treatment at the Site, or arranged with a transporter for the disposal or treatment at the Site, of wastes that included hazardous substances.

10. Defendant Ford Motor Company ("Ford") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at The American Road, Dearborn, MI 48121. At times material hereto, Ford, as successor to Ford Electronics and Refrigeration Corporation ("Ford Electronics"), has done business in this judicial district. Upon information and belief, Ford and/or Ford Electronics arranged for the disposal or treatment at the Site, or arranged with a transporter for the disposal or treatment at the Site, of wastes that included hazardous substances.

11. Defendant Hoeganaes Corporation ("Hoeganaes") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at River Road and Taylors Lane, Riverton, NJ 08077. At times material hereto, Hoeganaes has done business in this judicial district and has owned or operated a facility at the Site. Upon information and belief, Hoeganaes arranged for the disposal or treatment at the Site, or arranged with a transporter for the disposal or treatment at the Site, of wastes that included hazardous substances.

12. Defendant Honeywell, Inc. ("Honeywell") is a corporation organized and existing

under the laws of the State of Delaware, with its principal place of business at 101 Columbia Road, Morristown, NJ 07962. At times material hereto, Honeywell, as successor to Allied Signal, Inc. ("Allied Signal"), has done business in this judicial district. Upon information and belief, Honeywell and/or Allied Signal arranged for the disposal or treatment at the Site, or arranged with a transporter for the disposal or treatment at the Site, of wastes that included hazardous substances.

13. Defendant L&L Redi Mix, Inc. ("L&L") is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business at 1939 Route 206, Vincentown, NJ 08088. At times material hereto, L&L has done business in this judicial district and has owned or operated a facility at the Site.

14. Defendant EPEC Polymers, Inc. ("EPEC Polymers"), formerly Tenneco Polymers, Inc. ("Tenneco Polymers"), is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1001 Louisiana Street, Houston, TX 77002. At times material hereto, EPEC Polymers and/or its predecessor Tenneco Polymers has done business in this judicial district. Upon information and belief, EPEC Polymers and/or Tenneco Polymers arranged for the disposal or treatment at the Site, or arranged with a transporter for the disposal or treatment at the Site, of wastes that included hazardous substances.

15. Defendant 20<sup>th</sup> Century Refuse Removal Co. ("20<sup>th</sup> Century") is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business at 1818 E. Atlantic Street, Philadelphia, PA 19134. At times material hereto, 20<sup>th</sup> Century has done business in this judicial district. Upon information and belief, 20<sup>th</sup> Century accepted for transport to the Site for disposal wastes that included hazardous substances.

16. Defendant Waste Management of New Jersey, Inc. ("WMNJ"), successor by

merger with Interstate Waste Removal Co., Inc. ("Interstate Waste"); Waste Management of Central Jersey, Inc.; The O'Connor Corporation; and Waste Management of South Jersey, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1001 Fannin, Houston, TX 77002. At times material hereto, WMNJ and/or its predecessors Interstate Waste and The O'Connor Corporation have done business in this judicial district. Upon information and belief, WMNJ and/or its predecessors Interstate Waste and The O'Connor Corporation accepted for transport to the Site for disposal wastes that included hazardous substances.

17. Defendant Waste Management of Pennsylvania, Inc. ("WMPA"), successor by merger with Northeast Disposal, Inc. ("Northeast Disposal"); Schiavo Brothers, Inc. ("Schiavo Brothers"); Waste Automation Corporation ("Waste Automation"); Ziegler's Refuse Collectors, Inc. ("Ziegler's"); and Rite-Way Service, Inc., is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business at 1001 Fannin, Houston, TX 77002. At times material hereto, WMPA and/or its predecessors Northeast Disposal, Schiavo Brothers, Waste Automation, and Ziegler's have done business in this judicial district. Upon information and belief, WMPA and/or its predecessors Northeast Disposal, Schiavo Brothers, Waste Automation, and Ziegler's accepted for transport to the Site for disposal wastes that included hazardous substances.

18. Defendant SC Holdings, Inc. ("SCH") is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business at 1001 Fannin, Houston, TX 77002. At times material hereto, SCH has done business in this judicial district and has owned or operated a facility at the Site.

19. Defendant Waste Management Disposal Services of Pennsylvania ("WMDSPA"), successor by merger with Tri County Hauling, Inc. ("Tri County"), is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business at 1001 Fannin, Houston, TX 77002. At times material hereto, WMDSPA and/or its predecessor Tri County have done business in this judicial district. Upon information and belief, WMDSPA and/or its predecessor Tri County accepted for transport to the Site for disposal wastes that included hazardous substances.

### **GENERAL ALLEGATIONS**

#### **Site Description and Background**

20. The Site encompasses approximately 400 acres, and is located in the Townships of Cinnaminson and Delran, Burlington County, New Jersey. The Site includes properties bounded by Union Landing Road, U.S. Route 130, River Road, and Taylors Lane, and includes properties outside these boundaries encompassing the aerial extent of contamination to which hazardous substances have or may have migrated or otherwise threatened to migrate.

21. In June 1984, EPA placed the Site on the National Priorities List ("NPL") due to the presence of groundwater contamination. EPA initiated a Remedial Investigation ("RI") in April 1985 to determine the nature and extent of all sources of the groundwater contamination. The RI identified contamination in the regional aquifer, which underlies the Site, and also in perched water zones. The contamination includes hazardous substances within the meaning of Sections 101(14) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9607(1), including but not limited to volatile organic and inorganic compounds.

22. EPA signed a Record of Decision ("ROD") for the first Operable Unit ("OU 1") at

the Site on September 28, 1990, which required remediation of the groundwater in the shallow and deep aquifers underlying the Site.

23. For purposes of the response actions, EPA divided the Site into two operable units. OU 1 addresses the remediation of the contaminated groundwater at the Site, while the second Operable Unit ("OU 2") addresses whether the existing closure of the SCH Landfill is adequate.

24. On June 28, 1991, EPA issued an Unilateral Administrative Order ("UAO"), Index No. II-CERCLA 10107, to Sanitary Landfill, Inc. ("SLI"), then a subsidiary of Waste Management of North America, Inc., which was a subsidiary of Waste Management, Inc., now known as Waste Management Holdings, Inc. to perform the Remedial Design and Remedial Action ("RD/RA") at the Site.

25. In December 1993, SLI merged into SCH, and is a predecessor-in-interest to SCH. SCH is a subsidiary of Waste Management, Inc.

#### **Defendant SCH's Activities at the Site**

26. SCH acquired approximately 136 acres of the 400 acre Site when its predecessor-in-interest, SLI, purchased various parcels of the Site in 1962, 1970, 1979, 1984 and 1985.

27. Prior to SLI's ownership of property at the Site, a sand and gravel quarry was operated by Lockhart Construction Company on a portion of the properties presently owned by SCH.

28. Upon information and belief, during the late 1950's, prior to SLI's ownership of any portion of the Site, municipal solid wastes were deposited in the completed mining pits located on property SLI later purchased, while sand and gravel mining operations continued in the other active pits. The mining operations were terminated in the late 1960's.



29. In 1962, SLI first began operating a sanitary landfill on a portion of its property at the Site.

30. SLI's landfilling operations on the portion of the property that it owned ceased in 1980.

31. On October 27, 1980, the Superior Court of New Jersey, Chancery Division, Burlington County, New Jersey ("Superior Court"), ordered SLI to close the landfill.

32. On October 15, 1984, the Superior Court approved an Administrative Consent Order issued by the New Jersey Department of Environmental Protection ("NJDEP Administrative Consent Order") requiring SLI to implement a closure plan for the landfill.

33. Pursuant to the NJDEP Administrative Consent Order, SLI capped the landfill and took other remedial measures at the landfill.

#### **EPA Site Cleanup and Enforcement Activities**

34. EPA determined that the results of quarterly groundwater monitoring and hydrogeologic studies indicated that groundwater underneath the Site was contaminated with hazardous substances, as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and in June, 1984, EPA placed the Site on the NPL.

35. In April, 1985, EPA initiated a RI to determine the sources, nature and extent of the groundwater contamination. The RI Report was completed in May, 1989.

36. The RI Report indicated that volatile organic and inorganic compounds, including but not limited to CERCLA hazardous substances such as arsenic, chloroform, benzene, tetrachloroethylene, and vinyl chloride, have been detected in the groundwater at the Site. Ingestion of contaminated groundwater poses the greatest potential risk to residents with respect to the Site.

37. In May, 1989, EPA initiated a FS to develop and evaluate the alternatives for the

remediation of groundwater contamination at the Site. The FS Report was completed in December, 1989.

38. The RI/FS concluded that several of the industries at the Site were potential contributing sources to the groundwater contamination.

39. The ROD, which documented EPA's selection of a remedy for OU 1 at the Site, required the following actions: extraction and treatment of contaminated groundwater from both the shallow and deep aquifers; re-injection of the treated groundwater into the deep aquifers; and installation and monitoring of additional wells to ensure the effectiveness of the remedy.

40. In June 1991, EPA issued an UAO to SLI requiring SLI to undertake the remedy selected in the ROD.

41. In September, 1991, SLI reimbursed EPA for a portion of EPA's response costs that had been incurred as of that time.

42. SLI, by and through its successor SCH, is performing the remedial action at the Site with respect to OU 1.

### **SPECIFIC ALLEGATIONS**

43. The United States realleges and incorporates Paragraphs 1 through 42 as if fully set forth herein.

44. The Site is a location where hazardous substances have been deposited, stored, disposed of, placed or otherwise come to be located, and thus is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

45. There have been "releases" or "threatened releases" of "hazardous substances," within the meaning of Sections 101(14), 101(22) and 107(a) of CERCLA, 42 U.S.C.

§§ 9601(14), 9601(22) and 9607(a), into the environment at and from the Site.

46. Each Defendant in this action is a "person," within the meaning of Sections 101(21) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(21) and 9607(a).

47. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in relevant part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this Section –

- (1) the owner and operator of a vessel or facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan;

....

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D)

....

Id.

48. Defendants AFG, BOC Gases, Del Val, Hoeganaes, L&L Redimix, and SC Holdings are each a current "owner or operator" of a facility at the Site within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

49. Defendants AFG, BOC Gases and/or its predecessor Airco, Del Val, Hoeganaes, L&L Redimix, and SCH “owned or operated” a facility at the Site at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

50. Defendants Atlantic Metals, BOC Gases and/or its predecessor Airco, Del Val, Sherman Wire and/or its predecessor DeSoto, Ford, as successor to Ford Electronics, Hoeganaes, Honeywell, as successor to Allied Signal, and EPEC Polymers and/or its predecessor Tenneco Polymers “arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment” of hazardous substances at the Site within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

51. Upon information and belief, Defendants 20<sup>th</sup> Century, WMNJ and/or its predecessors Interstate Waste and The O’Connor Corporation, WMPA and/or its predecessors Northeast Disposal, Schiavo Brothers, Waste Automation, and Ziegler’s, and WMDSPA and/or its predecessor Tri County accepted hazardous substances for transport to disposal or treatment facilities at the Site within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

52. As of May, 2003, the United States has incurred at least \$2,000,404 in unreimbursed “response” costs, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), excluding interest, related to the release or threatened release at the Site of hazardous substances, and the United States has and will continue to incur such costs.

53. The response costs related to the Site which were incurred by the United States are not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan, under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and 40 C.F.R. Part 300.

54. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), all herein-named Defendants are jointly and severally liable to the United States for response costs incurred by the United States with respect to the Site.

55. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States is entitled to a declaratory judgment that all herein-named Defendants are jointly and severally liable to the United States, under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for future response costs to be incurred by the United States with respect to the Site not inconsistent with the NCP.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff United States of America prays that this Court:

A. Enter judgment in favor of the United States, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), holding all herein-named Defendants jointly and severally liable for unrecovered costs incurred by the United States with respect to the Site, plus interest thereon;

B. Enter a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that all herein-named Defendants are jointly and severally liable to the United States for future response costs to be incurred by the United States with respect to the Site not inconsistent with the NCP, plus interest thereon;

C. Award the United States its costs of this action; and

D. Grant the United States such other and further relief as the Court deems just and proper.

Dated: \_\_\_\_\_

Respectfully submitted,

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources  
Division  
United States Department of Justice  
Washington, D.C. 20530

JONATHAN A. MARKS  
Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-4454

CHRISTOPHER J. CHRISTIE  
United States Attorney  
District of New Jersey

MICHAEL A. CHAGARES  
Assistant United States Attorney  
Chief, Civil Division  
District of New Jersey  
970 Broad Street, Room 400  
Newark, New Jersey 07102  
(973) 645-2700

OF COUNSEL:

DEBORAH L. MELLOTT  
Section Chief, New Jersey Superfund Branch  
Office of Regional Counsel  
Environmental Protection Agency  
Region II  
290 Broadway  
New York, New York 10007-1866